

Suppl.

ANNÉE  
THE  
Co., PLATE

(17,969.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 193.

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JEANNIE M. WILSON, ADMINISTRATRIX *D. B. N. C. T. A.* OF  
THE ESTATE OF ALEXANDER OSBOURN, DECEASED,  
&c., PLAINTIFF IN ERROR,

vs.

ADAM ISEMINGER AND ELMER H. ROGERS.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1  
*Petition for Writ of Error.*

HARRY G. CLAY, Administrator *d. b. n. c. t. a.* of Alexander Osbourne, Deceased, Plaintiff in Error,  
vs.  
ADAM ISEMINGER and ELMER H. ROGERS, Defendants in Error.

To the Honorable George Shiras, Jr., Justice of the Supreme Court of the United States :

The petition of Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of Alexander Osbourn, deceased, respectfully sheweth :

That Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, deceased, brought suit in the supreme court of Pennsylvania for the eastern district, entered to January term, 1898, No. 409, by writ of certiorari to an appeal from the judgment of the court of common pleas No. 1 of Philadelphia county, in a suit entered to December term, 1896, No. 240, and wherein the said administrator was plaintiff and Adam Iseminger defendant, and Elmer H. Rogers, terre-tenant; in which suit in the said supreme court of Pennsylvania the said administrator was plaintiff in error and the said

Adam Iseminger and Elmer H. Rogers defendants in error.

2 That the said suit in the said court of common pleas No. 1 of Philadelphia county was an action of assumpsit sur-ground-rent deed between Alexander Osbourn and wife and Adam Iseminger, dated the fourth day of January, 1854, and recorded on January 5th, 1854, in the proper office, in Philadelphia, in Deed Book T. H. 127, page 80, &c., to recover the semi-annual arrears of rent due April 1 and October 1 of each and every year from April 1, 1887, to October 1, 1896, inclusive; which suit was pleaded to issue and tried before a judge and jury in said court of common pleas No. 1, and wherein, on November 14th, 1898, the court directed a verdict for the defendant, upon which verdict judgment was subsequently entered in favor of the defendant on, to wit, December 20th, 1898.

That on the third day of April, 1899, the supreme court of Pennsylvania, sitting at Philadelphia, ordered the said judgment to be affirmed, and afterwards, on the third day of April, 1899, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid.

That since bringing said suit Harry G. Clay has been discharged from his said office as administrator, and letters of administration *de bonis non cum testamento annexo* have been duly granted to your petitioner, Jeannie M. Wilson, who has been duly substituted  
3 upon the record.

That the said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the right, title, privilege, and immunity claimed by your

petitioner, plaintiff and appellant aforesaid, were claimed under the Constitution of the United States, article 1, section 10, providing, among other things, that no State shall pass any law impairing the obligation of contracts, all of which appears of record.

That the decision and judgment of the supreme court aforesaid was against the right, title, privilege, and immunity so claimed.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania, in order that the said judgment of the supreme court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And she will ever pray.

JEANNIE M. WILSON.

4 STATE OF NEW YORK, {  
County of New York. }

Jeannie M. Wilson, being duly sworn, deposes and says that the facts in the above petition are true to the best of her knowledge and belief.

[SEAL.]

JEANNIE M. WILSON.

Sworn to and subscribed before me this 20th day of July, 1900.

F. A. WILSON,  
Notary Public for Kings Co.

Ctf. filed in N. Y. Co.

Endorsement: In the Supreme Court of the United States of America. Jeannie M. Wilson, administratrix, vs. Adam Iseminger et al. Petition for writ of error. Writ of error allowed as prayed for. M. Hampton Todd, George Henderson.

5 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said the supreme court of Pennsylvania, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, plaintiff in error, and Adam Iseminger and Elmer H. Rogers, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United

States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Harry G. Clay, administrator *d. b. n. c. t. a.* of the estate of Alexander Osbourn, deceased, as is set forth by Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of the estate of Alexander Osbourn, deceased, substituted plaintiff in error, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,  
*Clerk of the Supreme Court of the United States.*

Allowed by—

GEORGE SHIRAS, JR.,  
*Associate Justice of the Supreme  
Court of the United States.*

[Endorsed:] In the Supreme Court of the United States of America. Jeannie M. Wilson, administratrix of Alexander Osbourn, deceased, plaintiff in error, *vs.* Adam Iseminger and Elmer H. Rogers, defendants in error. Writ of error. M. Hampton Todd, George Henderson.

7 UNITED STATES OF AMERICA, *ss.*:

To Adam Iseminger and Elmer H. Rogers, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of the estate of Alexander Osbourn, deceased, substituted for Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, — plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 29th day of October, in the year of our Lord one thousand nine hundred.

GEORGE SHIRAS, JR.,  
*Associate Justice of the Supreme Court of the United States.*

[Endorsed:] In the Supreme Court of the United States of America. Jeannie M. Wilson, administratrix, vs. Adam Iseminger and Elmer H. Rogers. Citation surwrit of error. M. Hampton Todd, George Henderson.

On this seventh day of November, in the year of our Lord one thousand nine hundred (1900), personally appeared Robert G. Erskine before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, and makes oath that he delivered a true copy of the within citation to Elmer H. Rogers, the defendant in error and terre-tenant of the premises in question, on the sixth day of November, 1900. Adam Iseminger could not be found.

ROBERT G. ERSKINE.

Sworn to and subscribed the 7th day of November, A. D. 1900.

[Seal of Wm. A. Rafferty, Notary Public, Philada., Pa.]

WM. A. RAFFERTY,  
*Notary Public.*

8      *Bond Surwrit of Error to Supreme Court of the United States.*

Know all men by these presents that we, Jeannie M. Wilson, as principal, and The American Bonding and Trust Company of Baltimore City, as surety, are held and firmly bound unto Adam Iseminger and Elmer H. Rogers in the full and just sum of five hundred dollars, to be paid to the said Adam Iseminger and Elmer H. Rogers, their and each of their certain attorney-, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of July, in the year of our Lord one thousand nine hundred.

Whereas lately, at a court of common pleas No. 1 in and for the county of Philadelphia, in a suit depending in said court between Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, deceased, and Adam Iseminger, defendant, and Elmer H. Rogers, terre-tenant, a judgment was rendered against the said Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, deceased, and the said Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of Alexander Osbourn, deceased, substituted plaintiff in error, having obtained a writ of error and filed a copy thereof in the clerk's office of the said

9 court to reverse the judgment in the aforesaid suit, and a citation directed to the said Adam Iseminger and Elmer H. Rogers, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof :

Now, the condition of the above obligation is such that if the said Jeannie M. Wilson shall prosecute the said writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void ; else to remain in full force and virtue.

JEANNIE M. WILSON.

[SEAL.]

THE AMERICAN BONDING AND  
TRUST COMPANY OF BALTI-  
MORE CITY,

By JAS. BOND, *President.*

[SEAL.]

Attest: SAMUEL H. SHINN, *Secretary.*

Sealed and delivered in presence of—

FRANCES M. BOWEN.

JAMES W. LOCKHART.

Approved :

GEORGE SHIRAS, JR.,

*Associate Justice of the Supreme  
Court of the United States.*

(2½ cts. U. S. revenue stamps, duly canceled.)

Endorsement : In the Supreme Court of the United States of America. Jeannie M. Wilson, administratrix, *vs.* Adam Iseminger and Elmer H. Rogers. Bond surwrit of error. M. Hampton Toold, George Henderson.

10 STATE OF MARYLAND, }  
City of Baltimore, }<sup>ss</sup>:

On this 26th day of July, A. D. 1900, before me, the subscriber, Howard Abrahams, a commissioner for the State of Pennsylvania, duly appointed to take proof and acknowledgment of deeds and other instruments, came James Bond, president, and Samuel H. Shriver, secretary of the American Bonding and Trust Company of Baltimore City, to me personally known to be the individuals described in and who executed the preceding instrument, and they each duly acknowledged the execution of the same, and, being by me duly sworn, severally and each for himself deposeth and saith that they are the said officers of the company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the city of Baltimore, the day and year first above written.

[SEAL.]

HOWARD ABRAHAMS,  
*Commissioner of Deeds for the State of  
 Pennsylvania in Maryland.*

Endorsement: In the Supreme Court of the United States of America. Jeannie M. Wilson, adm., vs. Adam Iseminger *et al.* Bond surwrit of error. M. Hampton Todd, George Henderson.

## 11 Supreme Court of Pennsylvania, Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district, *inter alia*, the following is thus contained:

### *Appearance Docket.*

### *Docket entries.*

#### January Term, 1898, No. 409.

George H. Hen-	HARRY G. CLAY, Adminis- trator <i>d. b. n. c. t. a.</i> of Alexander Osbourne, Deceased, Plaintiff,	Appeal from the court of com- mon pleas No. 1 of the county of Philadelphia.
409.	ADAM ISEMINGER, Defendant; Elmer H. Rogers, Terre-tenant.	Filed December 20, 1898. <i>Eo die.</i> Certiorari exit. Ret'ble the first Monday of February, 1899.
	Appeal of plaintiff.	January 7, 1899. Record re- turned and filed.
12	(C. P. 240, Dec. term, 1896.)	February 4, 1899. Assign- ments of error filed. March 21, 1899. Argued. April 3, 1899. Judgment af- firmed. <i>Per curiam.</i> (S.)

Apr. 4, 1899. Remittitur exit  
and with record and copy of  
opinion sent to the prothono-  
tary of Philadelphia county.

A. M. S.

And now, October 23rd, 1899,  
Harry G. Clay having been  
discharged from his said office  
of administrator, and Jeannie  
M. Wilson having been duly  
appointed to the said office, the  
substitution of the said Jeannie  
M. Wilson, administratrix *de  
bonis non cum testamento annexo*,  
as plaintiff in error, is hereby  
suggested in place of the said  
Harry G. Clay, administrator,  
etc., with the same effect as if  
the proceedings had originally  
been instituted by her.

GEORGE HENDERSON, Esq.,  
*Attorney for Jeannie M. Wilson,  
 Administratrix *d. b. n. c. t. a.**

October 23, 1899. Certiorari exit.

October 31, 1899. Record returned and filed.

13 July 11, 1900. Appearance for Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of Alexander Osbourn, deceased, substituted plaintiff and appellant, filed.

GEORGE HENDERSON, Esq.,  
*Atty for Jeannie M. Wilson, Adm'x, &c.*

July 11, 1900. Petition for the allowance of appeal to the Supreme Court of the United States filed on motion of George Henderson, Esq.

July 11, 1900. Being of opinion that no Federal question is involved, I refuse this petition for writ of error.

HENRY GREEN,  
*Chief Justice, Supreme Court of Pennsylvania.*

November 1st, 1900. Petition for writ of error to the Supreme Court of the United States brought into office.

*Eo die.* Writ of error, allowed by Justice Shiras, brought into office.

*Eo die.* Bond in the sum of five hundred dollars filed.

*Appeal and Affidavit.*

In the Supreme Court of Pennsylvania for the Eastern District.

14 HARRY G. CLAY, Administrator  
*d. b. n. c. t. a.* of Alexander Os-  
bourn, Deceased, Plaintiff, } Court of Common Pleas  
—  
ADAM ISEMINGER, Defendant, and ELMER } No. 1 of the County  
H. Rogers, Terre-tenant, Defendant. } of Philadelphia, Dec.  
Term, 1896. No. 240.

Enter appeal on behalf of Harry G. Clay, administrator, &c., from the judgment of the court of common pleas No. 1 of the county of Philadelphia.

GEORGE HENDERSON,  
*Atty for Appellant.*

To Charles S. Greene, proth'y sup. et., E. D.

15 COUNTY OF PHILADELPHIA, ss:

Harry G. Clay, being duly sworn, saith that said appeal is not taken for the purpose of delay, but because appellant believes he has suffered injustice by the judgment from which he appeals.

H. G. CLAY.

Sworn and subscribed this 7th day of Dec., A. D. 1898.

ALFRED H. WILLIAMS,  
*Notary Public.*

[SEAL.]

Endorsement: No. 409, January term, 1898, supreme court of Pennsylvania, eastern district. Harry G. Clay, adm., &c., *v.* Adam Iseminger, &c.; Elmer H. Rogers. Appeal and affidavit. Filed Dec. 20, 1898, in supreme court. George Henderson.

*Præcipe for Certiorari.*

In the Supreme Court of Pennsylvania for the Eastern District.

HARRY G. CLAY, Adm., &c.,  
Appellant,  
—  
ADAM ISEMINGER ET AL. } Certiorari to the Court of Common  
Pleas No. 1 of the County of Phil-  
adelph'ia, of December Term, 1896.  
No. 240.

Issue certiorari to the court of common pleas No. 1 of the county of Philadelphia to bring up record and proceedings in a certain action in said court, No. 240, Dec. term, 1896, wherein Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, —  
16 plaintiff and Adam Iseminger defendant and Elmer H. Rogers  
terre-tenant.

Returnable to next term, *sec. reg.*

GEORGE HENDERSON,  
*Attorney for Appellant.*

To Charles S. Greene, proth'y sup. court, E. D.

Endorsement: No. 409, January term, 1898, supreme court of Pennsylvania, eastern district. H. G. Clay, adm., &c., *v.* Adam Iseminger, &c.; Elmer H. Rogers. *Præcipe for certiorari.* Filed Dec. 20, 1898, in supreme court. George Henderson.

RECORD.

*Exemplification.*

PHILADELPHIA COUNTY, }  
State of Pennsylvania, } *sct:*

Among the records and proceedings of the court of common pleas No. one for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 240, December term, 1896, to wit:

## Docket Entries.

December Term, 1896.

Henderson.

HARRY G. CLAY, Administrator d. b. n. c. t. a. of the Estate of Alexander Osbourn, Dec'd, the said Harry G. Clay Having Been Duly Appointed in Place of Joseph A. Clay, Who Was Duly Appointed Administrator c. t. a. of said Estate in Place of Lewis G. Osbourn and Mahlon D. Levinsetter, Who Were the Executors Named in the Last Will and Testament of said Alexander Osbourn and Who Renounced Their Right to Act.

vs.  
ADAM ISEMINGER.

Nov. 28, 1896. Statement and aff't filed.

Jan. 28, 1897. Aff't of defense filed.

Dec. 28, 1897. Amendment to statement filed.

Jan. 21, 1898. Bill of exceptions filed.

*Ex parte.* Certificate filed certifying that the value of the property and matter really in controversy in this case is greater than \$1,000, exclusive of costs.

Oct. 5, 1898. Plea filed.

Jan. 30, 1897. By writing filed J. W. Martin withdraws his appearance for def't.

Dec. 7, 1898. Bill of exceptions filed.

*Ex parte.* Certificate of amount in controversy filed.

Dec. 5, 1898. Transcript of stenographer's notes filed.

Sum's assumpsit sur ground rent; deed dated Jan'y 4, 1854; rec. same day in D. B. T. H. No. 127, p. 80, &c.

Will, dated May 5, 1884, reg. in W. B. No. 56, p. 44, &c.

Exit Nov. 28, 1896.

Ret. 1 Mon. Dec., 1896: *Nihil habet.*

Dec. 12, 1896. Al's sum's exit.

Ret. 1 Mon. Jan'y, 1897; served Jno. E. Giles, tenant, and by advertising, and *nihil habet* — to def't.

Jan. 22, 1897. Rule for leave to Elmer E. Rogers to intervene and defend *pro interessu* sur, all proceedings to stay.

Jan. 30, 1897. Rule absolute.

Dec. 28, 1897. Rule on defendants to show cause why judg't should not be entered for want of a suff. aff't of defense.

*Ex parte.* Reasons filed.

Jan. 15, 1898. Rule discharged.

Jan. 28, 1898. Certiorari from S. C. of Jan'y, 1898, No. 63, bro't into office.

Feb'y 2, 1898. Record to S. C. exit.

July 29, 1898. Record returned and remittitur from S. C. filed certifying judgment affirmed.

Nov. 14, 1898. Jury called.

*Ex parte.* Verdict for defendant.

Nov. 17, 1898. Motion for a rule for a new trial; *ex parte*, reasons filed.

Dec. 6, 1898. Rule discharged.

Dec. 26, 1898. Jury fee p'd by pl'tff.

*Ex parte.* Judgment.

Dec. 21, 1898. Certiorari from S. C. of Jan'y, 1898, No. 409, bro't into office.

Dec. 28, 1898. Record to S. C. exit.

April 6, 1899. Record returned and remittitur from S. C. filed certifying judgment affirmed.

Oct. 23, 1899. Certiorari from S. C. of Jan'y T., 1898, No. 409, bro't into office.

S. C. costs, \$3.

Certified from the record this 30th day of Oct., A. D. 1899.

[SEAL.]

(Revenue stamp.)

2-103

JOHN L. BURNS,  
*Prothonotary C. C. P.*

*Exemplification.*

PHILADELPHIA COUNTY, }  
*State of Pennsylvania,* } *sct:*

Among the records and proceedings of the court of common pleas No. 1 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 240, December term, 1896, to wit:

*Docket Entries.*

December Term, 1896.

Henderson.

19

240.  
 J. W. Martin.  
 Jan'y 18, '97.  
 Jan'y 30, 1897.  
 by writing filed,  
 J. W. Martin  
 withdraws his appear-  
 ance for def't.  
 S. C. costs, \$3.

HARRY G. CLAY, Administrator *d. b. n. c. t. a.* of the Estate of Alexander Osbourn, Dec'd, the said Harry G. Clay Having Been Duly Appointed in Place of Joseph A. Clay, Who Was Duly Appointed Administrator *c. t. a.* of said Estate in Place of Lewis G. Osbourn and Mahlon D. Livinsetter, Who Were the Executors Named in the Last Will and Testament of said Alexander Osbourn and Who Renounced Their Right to Act,

vs.  
 ADAM ISEMINGER.

Nov. 28, 1896. Statement and aff't filed.

Jan. 28, 1897. Aff't of defence filed.

Dec. 28, 1897. Amendment to statement filed.

Jan. 21, 1898. Bill of exceptions filed.

*Eo die.* Certificate filed certifying that the value of the property and matter really in controversy in this case is greater than \$1,000, exclusive of costs.

Oct. 5, 1898. Plea filed.

Dec. 7, 1898. Bill of exceptions filed.

*Eo die.* Certificate of amount in controversy filed.

Dec. 5, 1898. Transcript of stenographer's notes filed.

Sum's assumpsit sur ground rec'd; deed dated Jan. 4, 1854; rec. same day in D. B. T. H. No. 127, p. 80, &c.

Will, dated May 5, 1854, reg. in W. B. No. 56, p. 44, &c.

Exit Nov. 28, 1896.

Ret. 1 Mon. Dec., 1896: *Nihil habet.*

Dec. 12, 1896. Al's sum's exit.

Ret. 1 Monday Jan'y, 1897; served John E. Giles, tenant, and *nihil habet* as to def't.

Jan'y 22, 1897. Rule for leave to Elmer E. Rogers to intervene and defend *pro interesse suo*, all proceedings to stay.

Jan. 30, 1897. Rule absolute.

Dec. 28, 1897. Rule on defendants to show cause why judgment should not be entered for want of a suff. aff. of defence.

*Eo die.* Reason- filed

Jan. 15, 1898. Rule discharged.

Jan. 28, 1898. Certiorari from S. C. of Jan., 1898, No. 63, bro't into office.

Feb'y 2, '98. Record to S. C. exit.

July 29, 1898. Record returned & remittitur from S. C. filed certifying judgment affirmed

Nov. 14, 1898. Jury called.

*Eo die.* Verdict for defendant.

Nov. 17, 1898. Motion for a rule for a new trial.

*Eo die.* Reasons filed.

Dec. 6, 1898. Rule discharged.

Dec. 20, 1898. Jury fee p'd by pl'tff.

*Eo die.* Judgment.

Dec. 21, 1898. Certiorari from S. C. of Jan'y T., 1898, No. 409, bro't into office.

Certified from the record this 28th day of Dec., 1898.

[SEAL.]

(Revenue stamp.)

JOHN L. BURNS,  
*Prothonotary.*

*Exemplification.*

PHILADELPHIA COUNTY, }  
State of Pennsylvania, } *set:*

Among the records and proceedings of the court of common pleas No. 1 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 240, December term, 1896, to wit:

20

*Docket Entries.*

December Term, 1896.

Henderson.

HARRY G. CLAY, Administrator *d. b. n. c. t. a.* of the Estate of Alexander Osbourn, Dec'd., the said Harry G. Clay Having Been Duly Appointed in Place of Joseph A. Clay, Who Was Duly Appointed Administrator *c.t. a.* of said Estate in Place of Lewis G. Osbourn and Mahlon L. Levinsetter, Who Were the Executors Named in the Last Will and Testament of said Alexander Osbourn and Who Renounce Their Right to Act,

vs.

ADAM ISEMINGER.

Nov. 28, 1896. Statement and aff't filed.

Jan. 28, 1897. Aff't of defence filed.

Dec. 28, 1897. Amendment to statement filed.

Jan. 21, 1898. Bill of exceptions filed.

*Ex die.* Certificate filed certifying that the value of the property and matter really in controversy in this case is greater than \$1,000, exclusive of costs.

Sum's assump'sit sur ground rent; deed dated Jan. 4, 1854; rec. same day in D. B. T. H. No. 127, p. 80, &c.

Will dated May 5, 1854, reg. in W. B. No. 56, p. 44, &c.

Exit Nov. 28, 1896.

Ret. 1 Mon. Dec., 1896: *Nihil habet.*

Dec. 12, 1896. Al's sum's exit.

Ret. 1 Mon. Jan'y, 1897.

Served Jno. E. Giles, tenant, and by advertising and *nihil habet* as to def't.

Jan. 22, 1897. Rule for leave to Elmer E. Rogers to intervene and defend *pro interesse suo*, all proceedings to stay.

Jan. 30, 1897. Rule absolute.

Dec. 28, 1897. Rule on defendant to show cause why judgment should not be entered for want of a suff. aff't of defence.

*Ex die.* Reasons filed.

Jan. 15, 1898. Rule discharged.

Jan. 28, 1898. Certiorari from S. C. of Jan'y, 1898, No. 63, bro't into office.

240.  
J. W. Martin.  
Jan'y 18, '97.  
Jan. 30, 1897,  
by writing filed,  
J. W. Martin  
withdraws his  
appearance for  
def't.

Certified from the record this 31st day of January, A. D. 1898.

[SEAL.]

JOHN L. BURNS,  
*Pro Prothonotary.*

21

*Summons.*

COUNTY OF PHILADELPHIA, }  
The Commonwealth of Pennsylvania, } *ss:*

[SEAL.] To the sheriff of the county of Philadelphia, Greeting:

We command you, as before we did, that you summon Adam Iseminger, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas No. 1 of the county of Philadelphia, to be holden at Philadelphia, in and for

said county, on the first Monday of January next, there to answer Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, the said Harry G. Clay having been duly appointed by the register of wills for the county of Philadelphia on the thirtieth day of April, 1892, in place of Joseph A. Clay, who was duly appointed by the said register of wills administrator *cum testamento annexo* on the twenty-seventh day of June, 1860, in place of Lewis G. Osbourn and Mahlon D. Livinsetter, who were the executors named in the last will and testament of the said Alexander Osbourn, who renounced their right to act, of a plea of assumpsit sur-ground-rent deed between Alexander Osbourn and Jennie M., his wife, and the said Adam Iseminger, dated January 4th, 1854, recorded January 4th, 1854, in the proper office, at Philadelphia, in Deed Book T. H. No. 127, p. 80, &c., wherein the 22 said Alexander Osbourn conveyed to the said Adam Iseminger the premises now described:

All that certain lot or piece of ground situate on the south side of a certain street twenty-five feet wide, called State street, running from Delaware Seventh to Delaware Eighth streets between Wharton and Reed streets, in the district of Southwark, county of Philadelphia, at the distance of one hundred ninety-seven feet westward from the west side of said Seventh street, containing in front or breadth on the said State street eighty-four feet and extending of that width southward in length or depth between lines parallel to the said Seventh street on the east line thereof twenty-two feet three inches and on the west line thereof eight feet three inches, more or less; bounded northward by the said State street, southward by ground formerly of Ann James, eastward by ground granted to Thomas H. Adams on ground rent, southward by other ground formerly of the late Alexander Osbourn, reserving thereout the yearly ground rent of seventy-two dollars (\$72.00), payable half yearly on the first days of April and October, to him, the said Alexander Osbourn, his heirs and assigns, and the said Adam Iseminger in the said ground-rent deed duly covenanted to pay the said ground rent, as therein will more fully appear; and the said Alexander Osbourn, being so thereof seized, departed this life on or about the 1st day of May, 1859, having first made and published his last will and testament in writing, bearing date the 6th day of May, 1854, 23 and since his decease duly proved and registered at Philadelphia, in Will Book No. 56, p. 44, etc., wherein and whereby he gave to his executors therein named the power to sell any or all of his real estate and give to the purchasers thereof good and sufficient acquittance in law, as by reference to said will and the record thereof more fully and at large appears, and by said will the said Alexander Osbourn appointed Lewis G. Osbourn and Mahlon D. Livinsetter to be the executors thereof; which appointment they renounced, and Joseph A. Clay was duly appointed administrator thereof *cum testamento annexo*; and the said Joseph A. Clay, administrator, as aforesaid, departed this life in the year 1881, whereupon the register of wills for the county of Philadelphia aforesaid, on the 30th day of April, 1892, appointed Harry G. Clay administrator

*de bonis non cum testamento annexo*; all of which, by reference to the records of said register of wills, will more fully and at large appear; and to have you then and there this writ.

Witness the Honorable Craig Biddle, president judge of our said court, at Philadelphia, the 12th day of December, in the year of our Lord one thousand eight hundred and ninety-six (1896).

J. U. G. HUNTER,  
*Pro Prothonotary.*

24 Endorsement: 240, Dec. term, 1896, court of common pleas  
No. 1. Harry G. Clay, adm'r, &c., vs. Adam Iseminger,  
N. H. State street, 7th bet. Wharton & Reed Sts. Alias summons  
assumpsit sur-ground-rent deed, 197 feet west from west side of 7th  
St. Geo. Henderson.

Served John E. Giles, the tenant in possession of the premises described in a certain paper hereto annexed, marked "A," by leaving December 28th, 1896, a true and attested copy of the within writ, at his dwelling-house, with an adult member of his family, and by advertising the same once a week for two successive weeks in the Evening Star, a daily paper published in the city of Philadelphia, agreeably to the act of assembly and rules of court in such cases made and provided, and an abstract in the "Legal Intelligencer," and *nihil habet* as to defendant.

So answers—

W. F. WILKINS,  
*Deputy Sheriff.*  
SAM'L M. CLEMENT, *Sheriff.*

12, 28, '96. As to John E. Giles, 724 Upper Medina, tenant in possession. Jennings.

HARRY G. CLAY, Administrator *d. b. n.*  
*c. t. a.* of the Estate of Alexander Osbourn, Deceased, the said Harry G. Clay Having Been Duly Appointed in Place of Joseph A. Clay, Who Was Duly Appointed Administrator *c. t. a.* of said Estate in Place of Lewis G. Osbourn and Mahlon D. Livinsetter, Who Were the Executors Named in the Last  
25 Will and Testament of said Alexander Osbourn, and Who Renounced Their Right to Act,  
vs.  
ADAM ISEMINGER.

C. P. No. —, — Term,  
1896. No. —.

To the prothonotary, court of common pleas, Philadelphia county.

SIR: Issue summons in an action of assumpsit returnable *sec. leg.* for recovery of the arrears of ground rent due by Adam Iseminger on the ground-rent deed between Alexander Osbourn and Jennie M.

his wife, and the said Adam Iseminger, dated January 4th, 1854, recorded January 4th, 1854, in the proper office at Philadelphia, in Deed Book T. H. No. 127, p. 80, &c., wherein the said Alexander Osbourn conveyed to the said Adam Iseminger the premises now described:

All that certain lot or piece of ground situate on the south side of a certain street twenty-five (25) feet wide, called State street, running from Delaware Seventh to Delaware Eighth streets between Wharton and Reed streets, in the district of Southwark, county of Philadelphia, at the distance of one hundred ninety-seven (197) feet

26 westward from the west side of the said Seventh street, containing in front or breadth on the said State street eighty-four (84) feet and extending of that width southward in length or depth between lines parallel to the said Seventh street on the east line thereof twenty-two feet three inches (22' 3") and on the west line thereof eight feet three inches (8' 3"), more or less; bounded northward by the said State street, southward by ground formerly of Ann James, eastward by ground granted to Thomas H. Adams on ground rent, southward by other ground formerly of the late Alexander Osbourn, reserving thereout the yearly ground rent of seventy-two dollars (\$72.00), payable half yearly on the first days of April and October to him, the said Alexander Osbourn, his heirs and assigns, and the said Adam Iseminger in the said ground-rent deed duly covenanted to pay the said ground rent, as therein will more fully appear, and the said Alexander Osbourn, being so thereof seized, departed this life on or about the 1st day of May, 1859, having first made and published his last will and testament in writing, bearing date the 6th day of May, 1854, and since his decease duly proved and registered at Philadelphia in Will Book No. 56, p. 44, etc., wherein and whereby he gave to his executors therein named the power to sell any or all of his real estate, and give to the purchasers thereof good and sufficient acquittances in law, as by reference to said will and

27 the record thereof more fully and at large appears; and by said will the said Alexander Osbourn appointed Lewis G. Osbourn

and Mahlon D. Livinsette to be the executors thereof, which appointment they renounced, and Joseph A. Clay was duly appointed administrator thereof *cum testamento annexo*; and the said Joseph A. Clay, administrator as aforesaid, departed this life in the year 1881, whereupon the register of wills for the county of Philadelphia aforesaid, on the 30th day of April, 1892, appointed Harry G. Clay administrator *de bonis non cum testamento annexo*; all of which, by reference to the records of said register of wills, will more fully and at large appear.

And the said Harry G. Clay, administrator *de bonis non cum testamento annexo*, claims herein to recover arrears of the said ground rent as per the following—

*Statement.*

Six months' rent, under ground-rent deed between Alexander Osbourn and Adam Iseminger, dated and recorded as above stated, due April 1st, 1887.....	\$36.00
Six months' ground rent, under same, due October 1st, 1887..	36.00
Ditto, due April 1st, 1886.....	36.00
"      " October 1st, 1888.....	36.00
"      " April 1st, 1889.....	36.00
"      " October 1st, 1889.....	36.00
"      " April 1st, 1890.....	36.00
28	
"      " October 1st, 1890.....	36.00
"      " April 1st, 1891.....	36.00
"      " October 1st, 1891.....	36.00
"      " April 1st, 1892.....	36.00
"      " October 1st, 1892.....	36.00
"      " April 1st, 1893.....	36.00
"      " October 1st, 1893.....	36.00
"      " April 1st, 1894.....	36.00
"      " October 1st, 1894.....	36.00
"      " April 1st, 1895.....	36.00
"      " October 1st, 1895.....	36.00
"      " April 1st, 1896.....	36.00
"      " October 1st, 1896.....	36.00

With interest on each arrear.

GEORGE HENDERSON,  
*Attorney for Plaintiff.*

11, 27, '96.

Harry G. Clay, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing praecipe and statement are true to the best of his knowledge and belief.

H. G. CLAY.

29 Sworn to and subscribed before me this 25th day of November, A. D. 1896.

ALFRED H. WILLIAMS,  
*Notary Public.*

[SEAL.]

Endorsement: No. 240, Dec. term, 1896, C. P. 1. Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, dec'd, *vs.* Adam Iseminger. Praecipe, statement, and affidavit. Filed Nov. 26, 1896. Hunter, pro proth'y. Filed Nov. 28, 1896. Pro proth'y. Henderson.

CLAY, Administrator d. b. n. c. t. a., &c., }  
 vs. } C. P. No. 1, Dec. Term,  
 ADAM ISEMINGER, Defendant, and ELMER } 1896. No. 240.  
 H. Rogers, Terre-tenant.

*Amendment to Plaintiff's Statement.*

And now, November 30th, 1897, George Henderson, attorney for the plaintiff, and Alexander Simpson, Jr., attorney for Rogers, terre-tenant, agree that the statement filed in the above-entitled case shall be amended as follows:

On page one, sixteenth line from the bottom, after "in Deed Book T. H. No. 127, p. 80, &c.", insert "a copy of which deed is hereunto annexed, marked 'Exhibit A' and made part hereof."

30 And at the end of the statement add the following:

"EXHIBIT A."

Alexander Osbourn *et ux.* }  
 to } Deed Book T. H. 127, p. 80, &c.  
 Adam Iseminger. }

This indenture made the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-four, between Alexander Osbourn of the city of Philadelphia, gentleman, and Jeannie M. his wife, of the one part, and Adam Iseminger, of the district of Southwark and county of Philadelphia, carpenter, of the other part:

Witnesses that the said Alexander Osbourn and Jeannie M. his wife, as well for and in consideration of the sum of one dollar lawful money unto them at or before the sealing and delivery hereof by the said Adam Iseminger well and truly paid, the receipt whereof is hereby acknowledged, as of the payment of the yearly rent and taxes and performance of the covenants and agreements hereinafter mentioned, which on the part of the said Adam Iseminger, his heirs and assigns, is and are to be paid and performed, have granted, bargained, sold aliened, enfeoffed, released and confirmed, and by

31 these presents do grant bargain, sell, alien, enfeoff, release and confirm unto the said Adam Iseminger, his heirs and assigns, all that certain lot or piece of ground situate on the south side of a certain street twenty feet wide called State street, running from Delaware Seventh to Eighth streets between Wharton and Reed streets in the district of Southwark and county of Philadelphia, at the distance of one hundred and ninety-seven feet westward from the west side of the said Seventh street containing in front or breadth on the said State street, eighty-four feet and extending of that width southward in length or depth between lines parallel with said Seventh street on the east line thereof twenty-two feet three inches and on the west line thereof eighty feet three inches more or less, bounded northward by the said State street, southward by ground formerly of Ann James and now or late of John K. McCurdy,

eastward by ground granted to Thomas H. Adams on ground rent, and westward by other ground of the said Alexander Osbourn (being part of a larger lot of ground which William Deal, Esquire, high sheriff of the city and county of Philadelphia, by deed-poll, under his hand and seal, dated the twenty-third day of March, anno Domini, one thousand eight hundred and fifty, duly executed and acknowledged in open district court for the said city and county on the same day and entered among the records thereof in Sheriff's

Deed Book W. page 326 &c., granted and conveyed *inter alia*  
32 unto the said Alexander Osbourn in fee, the same having  
been taken in execution and sold by the said sheriff as the  
property of Howard Hinchman and Richard W. Steel.)

Together with all and singular the ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto the said hereby-granted premises belonging or in anywise appertaining, and the reversions and remainders thereof.

To have and to hold the said described lot or piece of ground, hereditaments and premises hereby granted with the appurtenances unto the said Adam Iseminger, his heirs and assigns to the only proper use and behoof of the said Adam Iseminger, his heirs and assigns forever.

Yielding and paying therefor and thereout unto the said Alexander Osbourn, his heirs and assigns, the yearly rent or sum of seventy-two dollars lawful money of the United States of America in half-yearly payments on the first day of April and October in every year hereafter forever without any deduction, defalcation or abatement for any taxes, charges or assessments whatsoever to be assessed as well on the said hereby-granted premises as on the said yearly rent hereby and thereout reserved. The first half-yearly payment thereof

33 to be made on the first day of October one thousand eight hundred and fifty-four and on default of paying the said yearly rent on the days and time and in manner aforesaid it shall and may be lawful for the said Alexander Osbourn, his heirs and assigns, to enter into and upon the said hereby-granted premises or any part thereof and into the buildings thereon to be erected and to distrain for the said yearly rent so in arrear and unpaid without any exemption whatsoever, any law to the contrary thereof in anywise notwithstanding, and to proceed with and sell such distrained goods and effects according to the usual course of distresses for rent charges. But if sufficient distress cannot be found upon the said hereby-granted premises to satisfy the said yearly rent in arrear and the charges of levying the same, then and in such case it shall and may be lawful for the said Alexander Osbourn, his heirs and assigns, into and upon the said hereby-granted lot and all improvements wholly to re-enter and the same to have again, repossess and enjoy as in his and their first and former estate and title in the same and as though this indenture has never been made.

And the said Adam Iseminger for himself, his heirs, executors,

34 administrators and assigns doth covenant, promise and agree to and with the said Alexander Osbourn, his heirs and assigns, by these presents that he, the said Adam Iseminger, his heirs and assigns, shall and will well and truly pay or cause to be paid to the said Alexander Osbourn, his heirs and assigns, the aforesaid yearly rent or sum of seventy-two dollars lawful money aforesaid on the days and times hereinbefore mentioned and appointed for payment thereof, without any deduction, defalcation or abatement for any taxes, charges or assessments whatsoever, it being the express agreement of the said parties that the said Adam Iseminger, his heirs and assigns, shall pay all taxes whatsoever that shall hereafter be laid, levied or assessed by virtue of any laws whatever, as well on the said hereby-granted lot and buildings thereon to be erected as on the said yearly rent now charged thereon. Also that he, the said Adam Iseminger, his heirs and assigns, shall and will within one year from the date hereof erect and build on the said hereby-granted lot good and sufficient brick dwelling-houses to secure the said yearly rent hereby reserved. And the said grantee for himself, his heirs and assigns, doth hereby expressly waive the benefit of any and every law that might exempt said premises from levy and sale under execution or any part of the proceeds thereof from the payment of said rent. Provided always, nevertheless, that if the said Adam Iseminger, his heirs or assigns shall and do at any time hereafter pay or cause to be paid to the said Alexander Osbourn, his heirs or assigns, the sum of twelve hundred dollars lawful money as aforesaid and the 35 arrearages of the said yearly rent to the time of such payment, then the same shall forever thereafter cease and be extinguished and the covenant for payment thereof shall become void, and then he, the said Alexander Osbourn, his heirs or assigns shall and will at the proper costs and charges in the law of the said grantee, his heirs or assigns, seal and execute a sufficient release and discharge of the said yearly rent hereby reserved to the said Adam Iseminger, his heirs and assigns, forever, anything hereinbefore contained to the contrary thereof notwithstanding. And the said Alexander Osbourn, for himself, his heirs, executors and administrators, doth promise and agree to and with the said Adam Iseminger, his heirs and assigns, by these presents, that he, the said Adam Iseminger, his heirs and assigns, paying the said yearly rent or extinguishing the same and taxes and performing the covenants and agreements aforesaid, shall and may at all times hereafter forever freely, peaceably and quietly have, hold and enjoy all and singular the premises hereby granted with the appurtenances, and receive and take the rents and profits thereof without any molestation, interruption or eviction of him, the said Alexander Osbourn, or of his heirs, or of any other person or persons whomsoever lawfully claiming or to claim by, from or under him, them, or any of them, or by or with his, their, or any of their act, means, consent or procurement.

36

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

ALEX. OSBOURN. [SEAL.]  
 JEANNIE M. OSBOURN. [SEAL.]  
 ADAM ISEMINGER. [SEAL.]

Sealed and delivered in the presence of us.

C. BRAZER.

THOMAS BOYLE, JR.

The fourth day of January, anno Domini 1854, before me, one of the aldermen for the city of Philadelphia, State of Pennsylvania, came the above-named Alexander Osbourn and Jeannie M., his wife, and Adam Iseminger, and in due form of law acknowledged the above indenture to be their act and deed and desired the same might be recorded as such. The said Jeannie M., being of full age, separate and apart from her said husband by me examined, declared that she did voluntarily and of her own free will and accord seal and as her act and deed deliver the said indenture without any coercion or compulsion of her said husband, the contents thereof having first been by me fully made known unto her.

Witness my hand and seal the day and year above.

C. BRAZER, *Ald.* [SEAL.]

Recorded 5th January, 1854.

GEORGE HENDERSON,  
*Att'y for Plaintiff.*  
 ALEX. SIMPSON, JR.,  
*Att'y for Rogers, Terre-tenant.*

37 Endorsement: 240, December term, 1896, C. P. I. Clay v. Iseminger. Amendment to plaintiff's statement. Filed Dec. 28, 1897. J. Briggs, pro proth'y. George Henderson. Service accepted. Alex. Simpson, Jr., att'y for terre-tenant.

**HARRY G. CLAY, Administrator d. b. n.**  
*c. t. a. of the Estate of Alexander Osbourn, Deceased, the said Harry G. Clay Having Been Duly Appointed in Place of Joseph A. Clay, Who Was Duly Appointed Administrator *c. t. a.* of said Estate in Place of Lewis G. Osbourn and Mehlon D. Livinsetter, Who Were the Executors Named in the Last Will and Testament of said Alexander Osbourn, Who Renounced Their Right to Act,*

vs.  
**ADAM ISEMINGER.**

C. P. No. 1, December  
 Term, 1896. No. 240.

To the prothonotary, court of common pleas, Philadelphia county.

SIR: Issue alias summons in an action of assumpsit, re-  
 38 turnable *sec. leg.*, for recovery of the arrears of ground rent  
 due by Adam Iseminger on the ground-rent deed between  
 Alexander Osbourn and Jennie M., his wife, and the said Adam  
 Iseminger, dated January 4th, 1854, recorded January 4th, 1854, in  
 the proper office at Philadelphia, in Deed Book T. H. No. 127, p.  
 80, &c., wherein the said Alexander Osbourn conveyed to the said  
 Adam Iseminger the premises now described:

All that certain lot or piece of ground situate on the south side of a certain street twenty-five feet wide, called State street, running from Delaware Seventh to Delaware Eighth streets, between Wharton and Reed streets, in the district of Southwark, county of Philadelphia, at the distance of one hundred ninety-seven feet westward from the west side of said Seventh street, containing in front or breadth on the said State street eighty-four feet and extending of that width southward in length or depth between lines parallel to the said Seventh street on the east line thereof twenty-two feet three inches, and on the west line thereof eight feet three inches, more or less; bounded northward by the said State street, southward by ground formerly of Ann James, eastward by ground granted to Thomas H. Adams on ground rent, southward by other ground formerly of the late Alexander Osbourn, reserving thereout the

39 yearly ground rent of seventy-two dollars (\$72.00), payable  
 half yearly on the first days of April and October to him, the  
 said Alexander Osbourn, his heirs and assigns, and the said  
 Adam Iseminger in the said ground-rent deed duly covenanted to  
 pay the said ground rent, as therein will more fully appear; and  
 the said Alexander Osbourn, being so thereof seized, departed this  
 life on or about the 1st day of May, 1859, having first made and  
 published his last will and testament, in writing, bearing date the  
 6th day of May, 1854, and since his decease duly proved and regis-  
 tered at Philadelphia in Will Book No. 56, p. 44, etc., wherein and  
 whereby he gave to his executors therein named the power to sell  
 any or all of his real estate and give to the purchasers thereof good  
 and sufficient acquittance in law, as by reference to said will and

the record thereof more fully and at large appears, and by said will the said Alexander Osbourn appointed Lewis G. Osbourn and Mahlon D. Livinsetter to be the executors thereof, which appointment they renounced, and Joseph A. Clay was duly appointed administrator thereof *cum testamento annexo*, and the said Joseph A. Clay, administrator as aforesaid, departed this life in the year 1881, whereupon the register of wills for the county of Philadelphia aforesaid, on the 30th day of April, 1892, appointed Harry G. Clay administrator *de bonis non cum testamento annexo*, all of which by reference to the records of said register of wills will more fully and at large appear.

40 And the said Harry G. Clay, administrator *de bonis non cum testamento annexo*, claims herein to recover arrears of the said ground rent as per the following—

*Statement.*

Six months' rent, under ground-rent deed between Alexander Osbourn and Adam Iseminger, dated and recorded as above stated, due April 1st, 1887.....	\$36.00
Six months' ground rent, under same, due Oct. 1st, 1887.....	36.00
Ditto, due April 1st, 1888.....	36.00
“ “ Oct. 1st, 1888.....	36.00
“ “ April 1st, 1889.....	36.00
“ “ Oct. 1st, 1889.....	36.00
“ “ April 1st, 1890.....	36.00
“ “ Oct. 1st, 1890.....	36.00
“ “ April 1st, 1891.....	36.00
“ “ Oct. 1st, 1891.....	36.00
“ “ April 1st, 1892.....	36.00
“ “ Oct. 1st, 1892.....	36.00
“ “ April 1st, 1893.....	36.00
“ “ Oct. 1st, 1893.....	36.00
“ “ April 1st, 1894.....	36.00
“ “ Oct. 1st, 1894.....	36.00
“ “ April 1st, 1895.....	36.00
41 “ “ Oct. 1st, 1895.....	36.00
“ “ April 1st, 1896.....	36.00
“ “ Oct. 1st, 1896.....	36.00

With interest on each arrear.

GEORGE HENDERSON,  
*Atty for Plff.*

Endorsement: 240, Dec. T., 1896, C. P. 1. Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, deceased, *vs.* Adam Iseminger. Praecept for alias summons. Filed Dec. 12, 1896. Hunter, pro proth'y. Henderson.

*Summons.*

COUNTY OF PHILADELPHIA, }  
*The Commonwealth of Pennsylvania,* }<sup>ss</sup> :

[SEAL.] To the sheriff of the county of Philadelphia, Greeting:

We command you that you summon Adam Iseminger, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas No. 1 of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of December next, there to answer Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, the said Harry G. Clay having been duly appointed by the register of wills on the 30th of April, 1892, in place of Joseph A. Clay, who was duly appointed administrator *cum testamento annexo* of said estate in place of Lewis G. Osbourn and Mahlon

D. Livinsetter, who were the executors named in the last will  
 42 and testament of said Alexander Osbourn, and who renounced their right to act, of a plea of assumpsit sur-ground-rent deed between Alexander Osbourn and Jennie M., his wife, and Adam Iseminger, dated Jan. 4th, 1854, and recorded Jan. 4th, 1854, in the proper office, in Philadelphia, in Deed Book T. H. No. 127, page 80, &c.; and to have you then and there this writ.

Witness the Honorable Craig Biddle, president judge of our said court, at Philadelphia, the 28th day of November, in the year of our Lord one thousand eight hundred and ninety-six (1896).

J. U. G. HUNTER,  
*Pro Proth'y.*

Endorsement: 240, Dec. term, 1896, court of C. P. No. 1. Harry G. Clay, adm'r, &c., vs. Adam Iseminger. N. H. Summons. Henderson. *Nihil habet.* So answers Sam'l M. Clement, sheriff.

HARRY G. CLAY, Adm., &c., }  
 vs. } C. P. No. 1, Dec. Term, 1896. No.  
 ADAM ISEMINGER. } 240.

Proth'y will please enter my appearance for defendant in above-entitled case.

J. WILLIS MARTIN.

To proth'y, C. P.

Endorsement: 240, C. P. 1, Dec. T., 1896. Clay, adm'r, &c., v. Iseminger. Order for appearance. Filed Jan. 18, 1897. J. Briggs, pro proth'y. J. Willis Martin for def't.

43 HARRY G. CLAY, Adm'r, &c., } C. P. No. 1, December  
 vs. } Term, 1896. No. 240.  
 ADAM ISEMINGER. }

PHILADELPHIA COUNTY, ss :

Elmer H. Rogers, being duly sworn according to law, deposes and says that he has a just, full, and complete defence to the whole of the plaintiff's claim in the above case of the following nature and character :

Deponent is the terre-tenant and owner in fee of the lot of ground described in the ground-rent deed upon which this suit is brought, his title thereto being derived by various mesne conveyances from Adam Iseminger, the covenanter in said ground-rent deed and defendant in this case.

Deponent avers that no payment, claim, or demand has been made by any one on account of or for any ground rent on the premises for which suit is brought in this case or of or from any owner of said premises or any part thereof for more than twenty-one years prior to the bringing of this suit; that no declaration or acknowledgment of the existence thereof or of the right to collect said ground rent thereon has been made within that period by or for any owner of said premises or any part thereof, and that neither he or 44 they or any of them within that period ever executed any declaration of no set-off in reference to said ground rent, or recognized its existence in any way, manner, shape, or form.

All which facts he avers are true, and he expects to be able to prove them on the trial of the cause.

ELMER H. ROGERS.

Sworn to and subscribed before me this 27th day of January, A. D. 1897.

NEVIN J. LOOS,  
*M. C. C. of N. J.*

Endorsement: 240, Dec., 1896. Clay, adm'r, vs. Iseminger. C. P. No. 1. Affidavit of defense. Filed Jan. 28, 1897. P. Hunter, pro proth'y. Simpson, Jr.

CLAY }  
 v. } C. P. No. 1, Dec. Term, 1896. No. 240.  
 ISEMINGER. }

And now, January 22nd, 1897, on motion of Alex. Simpson, Jr., att'y for Elmer E. Rogers, the present owner of the land out of which the ground rent sued for in this case purports to issue, a rule is granted upon plaintiffs to show cause why said Elmer E. Rogers should not have leave to intervene and defend *pro interesse suo*, all proceedings to stay meanwhile; returnable January 30, 1897.

F. A. BREGY.

Endorsement: 240, Dec., 1896. Clay v. Iseminger. C. P. No. 1. Rule for leave to intervene and defend, proceedings to stay. Filed Jan. 22, 1897. D. Simpson, Jr.

45 HARRY G. CLAY, Adm'r, &c., } C. P. No. 1, December Term,  
vs. 1896. No. 240.  
ISEMINGER.

Proth'y will please withdraw my appearance for Iseminger, defendant in the above-entitled case.

J. WILLIS MARTIN

I hereby agree to the above.

## GEORGE HENDERSON.

Endorsement: 240, Dec. T., 1896, C. P. 1. Clay *vs.* Iseminger. Order to withdraw appearance. Filed Jan. 30, 1897. P. Hunter, pro proth'y. Henderson.

CLAY, Administrator *d. b. n. c. t. a.*,  
v. 28. } C. P. No. 1, Dec. T.,  
ISEMINGER, Defendant; ROGERS, Terre-tenant. } 1896. No. 240.

And now, December 28th, 1897, on motion of George Henderson, Esq., attorney of plaintiff, rule on defendants to show cause why judgment should not be entered for want of a sufficient affidavit of defence; returnable Saturday, December 8th, 1898, at ten a. m.

The plaintiff assigns as the reason why the rule should be made absolute because:

46 1. So much of the act of 27th of April, 1855, and in so far as it impairs the contract reserving the rent, which was created before 27th of April, 1855, is unconstitutional because inhibited by the tenth section of article 1 of the Constitution of the United States, which provides:

"No State shall enter into any treaty, alliance or confederation; grant letters of mark and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

GEORGE HENDERSON,  
*Attorney for Plaintiff.*

To prothonotary C. P.

Endorsement: 240, Dec. term, 1896, C. P. 1. Clay, adm'r, &c., v. Iseminger. Rule on defendants to show cause why judgment should not be entered for want of a sufficient affidavit of defence. Filed Dec. 28, 1897. D. George Henderson.

CLAY  
v. ISEMINGER. } C. P. No. 1, Dec. Term, 1896. No. 240.

Be it remembered that the plaintiff in the December term, 1896,  
47 come into the said court and filed his statement in an action  
of assumpsit sur-ground rent, to which the defendant filed an  
affidavit of defence.

And afterwards the plaintiff entered a rule on the defendant to

show cause why judgment should not be entered for the plaintiff for want of a sufficient affidavit of defence.

And on January 15th, 1898, the said court discharged the said rule for judgment.

And thereupon the counsel for the said Henry G. Clay, administrator, &c., did then and there except to the aforesaid decision discharging the said rule for judgment for want of a sufficient affidavit of defence, and inasmuch as the said exception does not appear on the record.

The said counsel for the said Henry G. Clay, administrator, &c., did then and there tender this bill of exception to the decision of the said court, and requested the seal of the judge should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exception this 21st day of January, 1898.

CRAIG BIDDLE,  
P. J., C. P. 1. [SEAL.]

Endorsement: 240, Dec. term, 1896, C. P. 1. Clay vs. Iseminger & Rogers. Bill of exception. Filed Jan. 21, 1898. J. Kenderdine, pro proth'y. George Henderson.

48 CLAY, Adm. d. b. n. c. t. a., } C. P. No. 1, Dec. Term, 1896.  
vs. } No. 240.  
ISEMINGER. }

And now, Jan. 21, 1898, we hereby certify that the value of the property and matter really in controversy in the above case is greater than \$1,000, exclusive of costs.

CRAIG BIDDLE.

Endorsement: 240, Dec. term, 1896, C. P. 1. Clay vs. Iseminger. Certificate of amount in controversy. Filed Jan. 21, 1898. J. Kenderdine, pro proth'y. George Henderson.

EASTERN DISTRICT OF PENNSYLVANIA, } ss:  
City and County of Philadelphia, }

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas No. 1 for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, from the decree in No. 240, December term, 1896, wherein the said appellant was plaintiff and Adam Iseminger, defendant, and H.

Rogers, *terre-tenant*, before you or some of you depending, 49 do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of Feb-

ruary next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,  
*Prothonotary.*

Endorsement: 240, Dec. term, 1896, C. P. No. 1. No 63. January term, 1898, supreme court. Henry G. Clay, adm'r d. b. n. c. t. a., appellant, vs. Adam Iseminger *et al.* Certiorari to the court of common pleas No. 1 for the county of Philadelphia. Returnable the first Monday of February, 1898. Rule on the appellee to appear and plead on the return day of the writ. Jan'y 28, 1898. Bro't into office. C. B. R. Filed Feb. 2, 1898, in supreme court. George Henderson, M. Hampton Todd.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania in and for the eastern district:

The record and process and all things touching the same so full and entire as before us they remain we certify and send as within we are commanded.

F. A. BREGY. [L. s.]

50	HARRY G. CLAY, Adm., etc.,	vs.	C. P. No. 1. Dec. Term,
ADAM ISEMINGER, Deft, and ELMER H.	Rogers, Terre-tenant.		

And now, Nov. 17th, 1898, the plaintiff, by George Henderson, Esq., his attorney, moves the court for a rule for a new trial, and in support of said motion files the following—

*Reasons.*

- I. The verdict is against the law of the case.
- II. The verdict is against the evidence of the case.
- III. The learned trial judge erred in refusing plaintiff's offer of testimony to prove the non-payment of the ground-rent estate, which was as follows:

I offer to prove as a fact that this ground rent has never been paid off and extinguished. To do this I offer to prove that the late Alexander Osbourn was judicially declared to be a lunatic in April, 1856; that this ground rent was included in a schedule of assets belonging to the said lunatic, which schedule was annexed to a petition filed in the court of common pleas of Philadelphia county on October 16, 1858, by the committee of the said lunatic, in which

51 the said committee prayed leave to sell certain other real estate belonging to the said lunatic; that the record of the said court of common pleas in the matter of the said lunatic's estate shows that no application was made to the said court for leave to sell or extinguish the said ground rent, and that no decree authorizing the sale or extinguishment of the said ground rent was ever made by the said court. I shall also offer in evidence the said record in the said proceedings in lunacy.

I will call Mr. Harry G. Clay, the administrator *d. b. n. c. t. a.* of the said Alexander Osbourn, and the plaintiff herein, to prove that Alexander Osbourn died insane in 1889, and that he, the said Harry G. Clay, is the executor of Joseph A. Clay, deceased, and who was the administrator *c. t. a.* of Alexander Osbourn, deceased, and who was one of the committee of the said lunatic during the whole period of said lunacy; that he, the said Harry G. Clay, was in the office and the assistant of the said Joseph A. Clay during the whole time that the latter occupied a fiduciary relation to the said estate of Alexander Osbourn; that the said Osbourn by his will directed his executors to sell his realty, and appointed Mahlon D. Livensetter and Lewis G. Osbourn the executors thereof, both of whom renounced their said appointments; that the said Joseph A. Clay was then duly appointed administrator of the said estate; that since the death of the said Osbourn no one other than the said

52 Joseph A. Clay and the said Harry G. Clay has been invested with authority to receive the said payment and give a release of the said ground rent; that the said Joseph A. Clay occupied a fiduciary relation to many estates; that he was a careful and methodical man of business; that he kept accurate books of account of the said Osbourn estate during the whole of his stewardship, both as committee and as administrator; that he, the said Harry G. Clay, now has those books in his possession; that the said books contain no record of this ground rent having been paid; that to the best of the knowledge, information, and belief of the said Harry G. Clay the said ground rent has never been paid off, either during the lifetime of the said lunatic, or during the said administration of the said Joseph A. Clay, or during the said administration of the said Harry G. Clay.

I will also offer in evidence, as corroborating Mr. Clay's testimony and as tending to show the non-payment of this rent (estate), the account of Joseph A. Clay, committee of the lunatic aforesaid; the account of Joseph A. Clay, administrator *c. t. a.*, as aforesaid, as stated by his executor, Harry G. Clay, and the account of Harry G. Clay, administrator *d. b. n. c. t. a.*, as aforesaid.

I will then ask the jury to find as a fact from the foregoing evidence that the said ground-rent estate has not been extinguished by being paid.

53 IV. The learned trial judge erred in instructing the jury as follows:

"As the law says that a ground rent not demanded within 21 years is irrecoverable, the verdict in this case must be for the defendant. The plaintiff is not entitled to recover because demand

was not made within twenty-one years. It is too old to make a claim of that kind."

V. The learned trial judge erred in declining plaintiff's first point, which was:

"First. That under the evidence in this case the verdict should be for the plaintiff."

VI. The learned trial judge erred in declining plaintiff's second point, which was:

"Second. That the seventh section of the act adopted by this Commonwealth on the 27th of April, 1855 (P. L. 368, sec. 7), which is as follows: 'That in all cases where no payment, claim or demand shall have been made on account of or for any ground rent, annuity, or other charge upon real estate for twenty-one years, or no declaration or acknowledgment of the existence thereof shall have been made within that period by the owner of the premises, subject to such ground rent, annuity or charge a release or extinguishment thereof shall be presumed, and such ground rent, annuity or charge shall thereafter be irrecoverable; provided, that the evidence of such payment

54 may be perpetuated by recording in the recorder of deeds office of the proper county the duplicate of any receipt therefor, proved by oath or affirmation, to be a true copy of that signed and delivered in the presence of the payer and witnessed at the time by this deponent, which recorded duplicate or the exemplification of the record thereof shall be evidence until disproved, and the evidence of any such claim or demand may be perpetuated by the record of any judgment recovered for such rent, annuity or charge in any court of record, or the transcript therein filed of any recovery thereof by judgment before any alderman or justice of the peace, which record and judgment shall be duly indexed; provided, that this section shall not go into effect until three years from the passage of this act,' is unconstitutional because it impairs the contract reserving this rent, being inhibited by the tenth section of article I of the Constitution of the United States, which is as follows:

"No State shall enter into any treaty, alliance or confederation; grant letters of mark and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

I therefore charge you that under the evidence the verdict should be for the plaintiff."

55 VII. The learned trial judge erred in affirming defendant's point which was: "The verdict must be for the defendants."

GEORGE HENDERSON,

*Att'y for Plaintiff.*

11, 17, '98.

Endorsement: 240, Dec. T., 1896, C. P. 1. Clay, adm., etc., vs. Iseminger. Rule for new trial and reasons. Filed Nov. 17, 1896. D. George Henderson.

To proth'y, C. P.:

And said terre-tenant pleads *nil debit* and payment.

**SIMPSON & BROWN,**  
*Attorneys for Terre-tenant.*

10th month, 5th, 1898.

Endorsement: 240, Dec. term, 1896. Clay *vs.* Iseminger. C. P. No. 1. Pleas. Filed Oct. 5, 1898. P. White, pro proth'y. Simpson & Brown, attorneys for terre-tenant.

56 In the Court of Common Pleas No. 1, Philadelphia County,  
of December Term, 1896.

HARRY G. CLAY, Administrator *de bonis non cum testamento annexo* of the Estate of Alexander Osbourn, Deceased, No. 240.  
ADAM ISEMINGER, Defendant, and ELMER H. ROGERS, <sup>vs.</sup> Terre-tenant.

Be it remembered that in the said term of December, 1896, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of assumpsit, &c., in which the said plaintiff declared (*pro ut narr.*) and the said defendant pleaded (*pro ut pleas.*); and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the county aforesaid, before the Honorable F. Amedee Bregy, judge of the said court, the fourteenth day of November, 1898, the aforesaid issue between the said parties came to be tried by a jury of the said county for that purpose duly empanelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid impanelled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the trial the counsel of the said plaintiff, to maintain the issue on his part, gave in evidence and offered to prove the matters and things hereinafter specifically set forth in the official stenographer's notes of the said trial, and the court instructed the jury as also set forth in said notes, viz:

HARRY G. CLAY, Adm'r, etc.,  
 vs.  
 ADAM ISEMINGER, Deft, and ELMER H. ROGERS, } C. P. No. 1, D., '96.  
 Terre-tenant. } 240.

Before Bregy, J., November 14, 1898.

Present: G. Henderson, Esq., for pl'tff; Alex. Simpson, Jr., Esq., for defts.

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*Plaintiff's Evidence.*

Mr. Henderson offers in evidence statement of claim filed in the case and ground-rent deed.

Mr. HENDERSON: I offer to prove as a fact that this ground rent has never been paid off and extinguished. To do this I offer to prove that the late Alexander Osbourn was judicially declared 58 to be a lunatic in April, 1856; that this ground rent was included in a schedule of assets belonging to the said lunatic, which schedule was annexed to a petition filed in the court of common pleas of Philadelphia county on October 16, 1858, by the committee of the said lunatic, in which the said committee prayed leave to sell certain other real estate belonging to the said lunatic; that the record of the said court of common pleas in the matter of the said lunatic's estate shows that no application was made to the said court for leave to sell or extinguish the said ground rent, and that no decree authorizing the sale or extinguishment of the said ground rent was ever made by the said court. I shall also offer in evidence the said record in the said proceedings in lunacy.

I will call Mr. Harry G. Clay, the administrator *d. b. n. c. t. a.* of the said Alexander Osbourn and the plaintiff herein, to prove that Alexander Osbourn died insane in 1859, and that he, the said Harry G. Clay, is the executor of Joseph A. Clay, deceased, who was the administrator *c. t. a.* of Alexander Osbourn, deceased, and who was one of the committee of the said lunatic during the whole period of said lunacy; that he, the said Harry G. Clay, was in the office and the assistant of the said Joseph A. Clay during the whole time that the latter occupied a fiduciary relation to the said estate of Alexander

Osbourn; that the said Osbourn by his will directed his executors to sell his realty, and appointed Mahlon D. Livesetter and Lewis G. Osbourn the executors thereof, both of whom renounced their appointments; that the said Joseph A. Clay was then duly appointed administrator of the said estate; that since the death of the said Osbourn no one other than the said Joseph A. Clay and the said Harry G. Clay has been invested with authority to receive the said payment and give a release of the said ground rent; that the said Joseph A. Clay occupied a fiduciary relation to many estates; that he was a careful and methodical man of business; that he kept accurate books of account of the said Osbourn estate during the whole of his stewardship both as committee and as administra-

tor; that he, the said Harry G. Clay, now has those books in his possession; that the said books contain no record of this ground rent having been paid; that, to the best of the knowledge, information, and belief of the said Harry G. Clay, the said ground rent has never been paid off either during the lifetime of the said lunatic or during the said administration of the said Joseph A. Clay or during the said administration of the said Harry G. Clay.

I will also offer in evidence as corroborating Mr. Clay's testimony and as tending to show the non-payment of this rent (estate) the account of Joseph A. Clay, committee of the lunatic aforesaid; 60 the account of Joseph A. Clay, administrator *c. t. a.*, as aforesaid, as stated by his executor, Harry G. Clay, and the account of Harry G. Clay, administrator *d. b. n. c. t. a.*, as aforesaid.

I will then ask the jury to find as a fact from the foregoing evidence that the said ground-rent estate has not been extinguished by being paid.

(Objected to as immaterial and irrelevant. Objection sustained. Exception to plaintiff.)

Plaintiff closes.

Defendant- offers no evidence.

*Charge of the Court (Bregy, J.).*

GENTLEMEN: As the law says that a ground rent not demanded within 21 years is irrecoverable, the verdict in this case must be for the defendant. The plaintiff is not entitled to recover because demand was not made within twenty-one years. It is too old to make a claim of that kind.

I decline the plaintiff's points.

(Exception to plaintiff to declination of plaintiff's points and affirmation of defendants' point.)

The following is a copy of plaintiff's points:

First. That under the evidence in this case the verdict should be for the plaintiff.

61 Second. That the seventh section of the act adopted by this Commonwealth on the 27th of April, 1855 (P. L. 368, sec. 7), which is as follows: "That in all cases where no payment, claim, or demand shall have been made on account of or for any ground rent, annuity, or other charge upon real estate for twenty-one years, or no declaration or acknowledgment of the existence thereof shall have been made within that period by the owner of the premises, subject to such ground rent annuity or charge, a release or extinguishment thereof shall be presumed, and such ground rent, annuity or charge shall thereafter be irrecoverable; provided, that the evidence of such payment may be perpetuated by recording in the recorder of deeds' office of the proper county the duplicate of any receipt therefor, proved by oath or affirmation, to be a true copy of that signed and delivered in the presence of the payer and witnessed at the time by this deponent, which recorded duplicate or the exemplification of the record thereof shall be evidence until disproved; and the evidence of any such claim or demand may

be perpetuated by the record of any judgment recovered for such rent, annuity or charge in any court of record, or the transcript therein filed of any recovery thereof by judgment before any alderman or justice of the peace, which record and judgment shall be duly indexed; provided

62 that this section shall not go into effect until three years from the passage of this act," is unconstitutional because it impairs

the contract reversing this rent, being inhibited by the tenth section of article I of the Constitution of the United States, which is as follows: "No State shall enter into any treaty, alliance or confederation, grant letters of mark and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility." I therefore charge you that under the evidence the verdict should be for the plaintiff.

The following is a copy of defendants' point: "The verdict must be for the defendants."

(The court orders the charge of the court to be filed.) Verdict for defendants.

And counsel for the said plaintiff requested the court to charge the jury upon plaintiff's points as specifically set forth in the official stenographer's notes of the said trial, *supra*; which points were refused, and thereupon the counsel for the said plaintiff did then and there except to the said refusals to so charge.

And counsel for the said defendant- requested the court to charge the jury upon the defendants' point as specifically set forth in 63 the official stenographer's notes of the said trial, *supra*, and thereupon the court affirmed the said point of the defendant- to which affirmance the plaintiff then and there excepted.

And thereupon the court instructed the jury to find for the defendant.

And thereupon the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to and the overruling of plaintiff's offer of proof do not appear upon the record, the said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court and the rulings on the offers of proof as aforesaid and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 21st day of November, 1898.

F. A. BREGY. [SEAL]

Endorsement: Court of common pleas No. 1, Philadelphia county, Dec. term, 1896. No. 240. Bill of exceptions. Harry G. Clay, adm., &c., vs. Adam Iseminger *et al.* Approved. Alex. Simpson, Jr., att'y for def't. 11, 21, '98. Filed Dec. 7, 1898. Pennypacker, pro proth'y. George Henderson.

64      HARRY G. CLAY, Adm'r, etc.,      C. P. No. 1, D., '96.  
 vs.      240.  
 ADAM ISEMINGER, Def't, and ELMER H. ROGERS,      Terre-tenant.

Before Bregy, J., November 14, 1898.

Present: G. Henderson, Esq., for pl't'ff; Alex. Simpson, Jr., Esq., for def'ts.

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Filed Dec. 5, 1898. D.

*Plaintiff's Evidence.*

Mr. Henderson offers in evidence statement of claim filed in the case and ground-rent deed.

Mr. HENDERSON: I offer to prove as a fact that this ground rent has never been paid off and extinguished. To do this I offer to prove that the late Alexander Osbourn was judicially declared to be a lunatic in April, 1856; that this ground rent was included in a schedule of assets belonging to the said lunatic, which schedule was annexed to a petition filed in the court of common pleas of Philadelphia county on October 16, 1858, by the committee of the said lunatic, in which the said committee prayed leave to sell certain other real estate belonging to the said lunatic; that the record of the said court of common pleas in the matter of the said lunatic's estate shows that no application was made to the said court for leave to sell or extinguish the said ground rent, and that no decree authorizing the sale or extinguishment of the said ground rent was ever made by the said court. I shall also offer in evidence the said record in the said proceedings in lunacy.

I will call Mr. Harry G. Clay, the administrator *d. b. n. c. t. a.* of the said Alexander Osbourn, and the plaintiff herein, to prove that Alexander Osbourn died insane in 1859, and that he, the said Harry G. Clay, is the executor of Joseph A. Clay, deceased, who was the administrator *c. t. a.* of Alexander Osbourn, deceased, and who was one of the committee of the said lunatic during the whole period of said lunacy; that he, the said Harry G. Clay, was in the office and the assistant of the said Joseph A. Clay during the whole time that the latter occupied a fiduciary relation to the said estate of Alexander Osbourn; that the said Osbourn by his will directed his executors to sell his realty, and appointed Mahlon D. Livesetter and Lewis G. Osbourn the executors thereof, both of whom renounced their said appointments; that the said Joseph A. Clay was then duly appointed administrator of the said estate; that since the death of the said Osbourn no one other than the said Joseph A. Clay and the said Harry G. Clay has been invested with authority to receive the said payment and give a release of the said ground rent; that the said Joseph A. Clay occupied a

fiduciary relation to many estates; that he was a careful and methodical man of business; that he kept accurate books of account of the said Osbourn estate during the whole of his stewardship, both as committee and as administrator; that he, the said Harry G. Clay, now has those books in his possession; that the said books contain no record of this ground rent having been paid; that to the best of the knowledge, information, and belief of the said Harry G. Clay the said ground rent has never been paid off either during the lifetime of the said lunatic or during the said administration of the said Joseph A. Clay or during the said administration of the said Harry G. Clay.

I will also offer in evidence as corroborating Mr. Clay's testimony and as tending to show the non-payment of this rent (estate) the account of Joseph A. Clay, committee of the lunatic aforesaid, the account of Joseph A. Clay, administrator *c. t. a.*, as aforesaid, as stated by his executor, Harry G. Clay, and the account of Harry G. Clay, administrator *d. b. n. c. t. a.*, as aforesaid.

I will then ask the jury to find as a fact from the foregoing 67 evidence that the said ground estate has not been extinguished by being paid.

(Objected to as immaterial and irrelevant. Objection sustained. Exception to plaintiff.)

Plaintiff closes.

Defendant- offers no evidence.

*Charge of the Court (Bregy, J.).*

GENTLEMEN: As the law says that a ground rent not demanded within 21 years is irrecoverable, the verdict in this case must be for the defendant. The plaintiff is not entitled to recover because demand was not made within twenty-one years. It is too old to make a claim of that kind.

I decline the plaintiff's points.

(Exception to plaintiff to declination of plaintiff's points and affirmation of defendants' point.)

The following is a copy of plaintiff's points:

First. That under the evidence in this case the verdict should be for the plaintiff.

Second. That the seventh section of the act adopted by this Commonwealth on the 27th of April, 1855 (P. L. 368, sec. 7), which is as follows: "That in all cases where no payment claim, or 68 demand shall have been made on account of or for any ground rent, annuity or other charge upon real estate for twenty-one years, or no declaration or acknowledgment of the existence thereof shall have been made within that period by the owner of the premises, subject to such ground rent, annuity or charge a release or extinguishment thereof shall be presumed, and such ground rent, annuity or charge shall thereafter be irrecoverable; provided, that the evidence of such payment may be perpetuated by recording in the recorder of deeds' office of the proper county the duplicate of any

receipt therefor, proved by oath or affirmation to be a true copy of that signed and delivered in the presence of the payer and witnessed at the time by this deponent, which recorded duplicate or the exemplification of the record thereof shall be evidence until disproved; and the evidence of any such claim or demand may be perpetuated by the record of any judgment recovered for such rent, annuity or charge in any court of record, or the transcript therein filed of any recovery thereof by judgment before any alderman or justice of the peace, which record and judgment shall be duly indexed; provided that this section shall not go into effect until three years from the passage of this act," is unconstitutional because it impairs the contract reserving this rent, being inhibited by the tenth section of article I of the Constitution of the United States, which is as

69 title I of the Constitution of the United States, which is as follows: "No State shall enter into any treaty, alliance or confederation; grant letters of mark and reprisal; coin money, emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts or grant any title of nobility." I therefore charge you that under the evidence the verdict should be for the plaintiff.

The following is a copy of defendants' point: "The verdict must be for the defendants." (See note 1 of the court to be filed.) Verdict for

be for the defendants.  
(The court orders the charge of the court to be filed.) Verdict for defendants.

I, the undersigned, official stenographer of the court of common  
pleas No. 1, room A, of Philadelphia county, hereby certify that the  
foregoing is a true, accurate, and faithful transcript of the steno-  
graphic notes of the testimony and judge's charge taken by me on  
the trial of the above-entitled cause. W. A. SHAW

W. A. SHAW.

Endorsement: No. 240, C. P. No. 1, — term. — vs. —.  
Transcript of evidence and charge of the court.

70 HARRY G. CLAY, Adm'r, etc., vs. ADAM ISEMINGER and ELMER H. ROGERS. } C. P. No. 1, Dec. T., 1896. No. 240.

And now, November 21st, 1898, we hereby certify that the value of the property and matter really in controversy in the above case is greater than one thousand dollars, exclusive of costs.

F. A. BREGY.

Endorsement: 240. Dec. T., 1896. C. P. 1. Clay, adm'r, v.  
Iseminger. Certificate of amount in controversy. Filed Dec. 7,  
1898. Pennypacker, pro proth'y. George Henderson.

*Opinion of the Supreme Court of Pennsylvania. Filed July 21, 1898*

CLAY      } January Term, 1898. No. 63. C. P. No. 1,  
v.              } ISEMINGER.      Philadelphia County.

Argued 30 March, 1898.  
Filed July 21, 1898.

**Opinion by FELL, J.:**

The action was to recover arrears of ground rent reserved  
71 by deed dated January 4th, 1854. In the affidavit of defense  
it was averred that no payment, claim, or demand for the  
rent had been made by any one for more than twenty-one years, and  
that within that period of time no declaration or acknowledgment  
of the existence of the rent had been made by any one owning the  
premises. This brings the case directly within the provisions of  
the seventh section of the act of April 27th, 1855, P. L., 369, and the  
questions raised relate to the constitutionality of that section and to  
its application to ground rents reserved before its passage.

Both of these questions have been squarely presented and decided. The legislative intent to give the act a retroactive effect is apparent. In *Korn v. Brown*, 64 Pa., 55, which appears to be the first case in which the act was considered, it was decided that as the act did not go into effect for three years the retroactive bar was constitutional. In *Biddle v. Hooven*, 120 Pa., 221, the constitutionality of the act was the only question raised, and it was held that as the act merely operated to deprive the owner of the rent of a remedy for its collection after twenty-one years by raising a conclusive presumption of release or extinguishment, it was constitutional. In that case, as well as in the case of *Wallace v. The Church*, 152 Pa., 258, which decided that the act makes no exception in favor of persons under disabilities when their titles accrue, the ground rents were created before the passage of the act of 1855. We must therefore consider the questions at rest.

**The judgment is affirmed.**

EASTERN DISTRICT OF PENNSYLVANIA, *et al.*:

[SEAL.] The Commonwealth of Pennsylvania to the justices of the common pleas court No. 1 for the county of Philadelphia, Greeting:

Whereas, by virtue of our writ of certiorari from our supreme court of Pennsylvania for the eastern district, returnable in the same court on the first Monday of February, in the year of our Lord one thousand eight hundred and ninety-eight, a record was brought into the same court upon appeal by Harry G. Clay, administrator *de bonis non cum testamento annexo* of the estate of Alexander Osbourn, deceased, from your judgment made in the matter of No. 240, December term, 1896, wherein the said appellant was plaintiff and

Adam Iseminger defendant and Elmer H. Rogers terre-tenant, and it was so proceeded in our said supreme court that the following decree was made, to wit:

The judgment is affirmed;

And the record and proceedings thereupon and all things concerning the same were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of common pleas 73 No. 1 for the county of Philadelphia aforesaid, as well for execution or otherwise as to justice shall appertain: Wherefore we here remit you the record of the decree aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 29th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,  
*Prothonotary.*

Endorsement: 240, Dec. term, 1896, C. P. No. 1. No. 63, January term, 1898, supreme court. In the matter of the appeal of Harry G. Clay, adm'r, etc., vs. Adam Iseminger *et al.* Remittitur. Att'y, 3. Filed July 29, 1898. C. P. M.

EASTERN DISTRICT OF PENNSYLVANIA, } ss:  
City and County of Philadelphia, }

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas No. 1 for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Harry G. Clay, administrator *d. b. n. c. t. a.* of Alexander Osbourn, deceased, from the judgment in No. 240, December term, 1896, wherein the said appellant was plaintiff and Adam 74 Iseminger was defendant and Elmer H. Rogers, terre-tenant, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia in and for the eastern district the first Monday of February next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 20th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,  
*Prothonotary.*

Endorsement: 240, Dec. term, 1896, C. P. No. 1. No. 409, January term, 1898, supreme court. Harry G. Clay, adm'r d. b. n. c. t. a. of Alexander Osbourn, dec'd, appellant, vs. Adam Iseminger, def't, and Elmer H. Rogers, terre-tenant. Certiorari to the court of common pleas No. 1 for the county of Philadelphia. Returnable the first Monday of February, 1899. Rule on the appellee to appear and plead on the return day of the writ. Dec. 21, 1898. Brought into office. R. V. Clay, pro proth'y. Filed Jan. 7, 1899, in supreme court. George Henderson.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania in and for the eastern district:

The record and process and all things touching the same so full and entire as before us they remain we certify and send, as within we are commanded.

ABRAHAM M. BEITLER. [L. S.]  
CRAIG BIDDLE. [L. S.]

75      *Opinion of the Supreme Court of Pennsylvania. Filed April 3, 1899.*

HARRY G. CLVY, Adm'r, Ap't, } C. P. No. 1 of Philadelphia Co.  
v. }  
ADAM ISEMINGER. } No. 409, January Term, 1898.

Filed April 3, 1899.

*Per Curiam:*

We are not convinced that the learned trial court erred in refusing to affirm plaintiff's first and second points or in directing a verdict in favor of the defendants. The first three specifications of error are therefore overruled.

There was no error in sustaining defendants' objections to the offers of evidence recited in the fourth and last specification.

When this case was here before on the plaintiff's appeal from the refusal of the court below to enter judgment for want of a sufficient affidavit of defense (187 Pa., 108) the principles involved were considered and decided. It is unnecessary to repeat what we said then nor to add anything thereto.

Judgment affirmed.

76      EASTERN DISTRICT OF PENNSYLVANIA, *scit.*:

The Commonwealth of Pennsylvania to the justices of the [SEAL.] common pleas court No. 1 for the county of Philadelphia, Greeting:

Whereas by virtue of our writ of certiorari from our supreme court of Pennsylvania for the eastern district, returnable in the same court on the first Monday of February, in the year of our Lord one thousand eight hundred and ninety-nine, a record was brought into the same court upon appeal by Harry G. Clay, administrator

d. b. n. c. t. a. of Alexander Osbourn, deceased, from your judgment made in the matter of No. 240, December term, 1896, wherein the said appellant was plaintiff and Adam Iseminger defendant and Elmer H. Rogers terre-tenant, and was so proceeded in our said supreme court that the following decree was made, to wit:

Judgment affirmed;

And the record and proceedings thereupon and all things concerning the same were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of common pleas No. 1 for the county of Philadelphia aforesaid, as well for execution or otherwise as to justice shall appertain:

Wherefore we here remit you the record of the decree aforesaid and the proceedings thereupon, in order for execution or 77 otherwise, as aforesaid.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 5th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. S. GREENE,  
*Prothonotary.*

Endorsement: 240, Dec. term, 1896, C. P. No. 1. No. 409, January term, 1898, supreme court. In the matter of the appeal of Harry G. Clay, adm'r d. b. n. c. t. a. of Alexander Osbourn, deceased, vs. Adam Iseminger *et al.* Remittitur. Att'y, 3.00. Filed Apr. 6, 1899. R. V. Clay, pro proth'y.

EASTERN DISTRICT OF PENNSYLVANIA, } ss:  
[SEAL.] *City and County of Philadelphia,* }

The Commonwealth of Pennsylvania to the justices of the court of common pleas No. 1 for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of Harry G. Clay, administrator d. b. n. c. t. a. of Alexander Osbourn, deceased, from the judgment No. 240, December term, 1896, wherein the said appellant was plaintiff and Adam Iseminger defendant and Elmer H. Rogers terre-tenant, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before 78 the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, forthwith, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 23rd day of

October, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. S. GREENE,  
*Prothonotary.*

Endorsement: 240, Dec. term, 1896, C. P. No. 1. No. 409, January term, 1898, supreme court. Harry G. Clay, adm'r d. b. n. c. t. a. of Alexander Osbourn, deceased, appellant, vs. Adam Iseminger, def't; Elmer H. Rogers, terre-tenant. Certiorari to the court of common pleas No. 1 for the county of Philadelphia. Returnable forthwith. Rule on the appellee to appear and plead on the return day of the writ. Oct. 23, 1899, bro't into office. C. P. M. Filed Oct. 31, 1899, in supreme court. George Henderson.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

ABRAHAM M. BEITLER. [L. S.]  
F. A. BREGY. [L. S.]

*Assignments of Error.*

In the Supreme Court of Pennsylvania, Eastern District, January Term, 1898.

HARRY G. CLAY, Administrator, etc., Appellant,  
vs.  
ADAM ISEMINGER, Defendant, and ELMER H. ROGERS, Terre-tenant, Appellee. } No. 409.

*Assignments of error.*

1. The court erred in answering plaintiff's first point, which was: "First. That under the evidence in this case the verdict should be for the plaintiff."

The court did not respond to the plaintiff's points separately, but as to both answered: "I decline the plaintiff's points."

2. The court erred in answering plaintiff's second point, which was:

"Second. That the seventh section of the act adopted by this Commonwealth on the 27th of April, 1855 (P. L. 368, sec. 7), — or demand shall have been made on account of or for any ground rent annuity, or other charge upon real estate for twenty-one years, or no declaration or acknowledgment of the existence thereof shall have

80 been made within that period by the owner of the premises, subject to such ground rent, annuity or charge a release or extinguishment thereof shall be presumed, and such ground rent, annuity or charge shall thereafter be irrecoverable provided that the evidence of such payment may be perpetuated by recording in

the recorder of deeds' office of the proper county the duplicate of any receipt therefor, proved by oath or affirmation, to be a true copy of that signed and delivered in the presence of the payer and witnessed at the time by his deponent, which recorded duplicate or the exemplification of the record thereof shall be evidence until disproved; and the evidence of any such claim or demand may be perpetuated by the record of any judgment recovered for such rent, annuity or charge in any court of record, or the transcript therein filed of any recovery thereof by judgment before any alderman or justice of the peace, which record and judgment shall be duly indexed; provided that this section shall not go into effect until three years from the passage of this act," is unconstitutional because it impairs the contract reserving this rent, being inhibited by the tenth section of article 1 of the Constitution of the United States, which is as follows:

'No State shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal; coin money, emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.'

I therefore charge you that under the evidence the verdict should be for the plaintiff."

The court did not respond to the plaintiff's points separately, but as to both answered: "I decline the plaintiff's points."

3. The court erred in instructing the jury as follows:

"As the law says that a ground rent not demanded within 21 years is irrecoverable, the verdict in this case must be for the defendant."

4. The court erred in answering the defendant's objection to the plaintiff's offer of testimony to prove the non-payment and non-extinguishment of the ground-rent estate, the deed reserving which and the due recording thereof being admitted, to wit:

"I offer to prove as a fact that this ground rent has never been paid off and extinguished. To do this, I offer to prove that the late Alexander Osbourn was judicially declared to be a lunatic in April, 1856; that this ground rent was included in a schedule of assets belonging to the said lunatic, which schedule was annexed to a petition filed in the court of common pleas of Philadelphia county

on October 16, 1858, by the committee of the said lunatic, in 82 which the said committee prayed leave to sell certain other real estate belonging to the said lunatic; that the record of the said court of common pleas in the matter of the said lunatic's estate shows that no application was made to the said court for leave to sell or extinguish the said ground rent, and that no decree authorizing the sale or extinguishment of the said ground rent was ever made by the court. I shall also offer in evidence the said record in the said proceedings in lunacy.

I will call Mr. Harry G. Clay, the administrator *d. b. n. c. t. a.* of the said Alexander Osbourn, and the plaintiff herein, to prove that Alexander Osbourn died insane in 1859, and that he, the said Harry

G. Clay, is the executor of Joseph A. Clay, deceased, and who was the administrator *c. t. a.* of Alexander Osbourn, deceased, and who was one of the committee of the said lunatic during the whole period of his lunacy; that he, the said Harry G. Clay, was in the office and the assistant of the said Joseph A. Clay during the whole time that the latter occupied a fiduciary relation to the said estate of Alexander Osbourn; that the said Osbourn by his will directed his executors to sell his realty and appointed Mahlon D. Livenstetter and Lewis G. Osbourn the executors thereof, both of whom renounced their said appointments; that the said Joseph A. Clay was then duly appointed administrator of the said estate; that since the death of the said Osbourn no one other than the said Joseph

83 A. Clay and the said Harry G. Clay has been invested with authority to receive the said payment and give a release of the said ground rent; that the said Joseph A. Clay occupied a fiduciary relation to many estates; that he was a careful and methodical man of business; that he kept accurate books of account of the said Osbourn estate during the whole of his stewardship, both as committee and as administrator; that he, the said Harry G. Clay, now has those books in his possession; that the said books contain no record of this ground rent having been paid; that to the best of the knowledge, information, and belief of the said Harry G. Clay the said ground rent has never been paid off, either during the lifetime of the said lunatic or during the said administration of the said Joseph A. Clay or during the said administration of the said Harry G. Clay.

I will also offer in evidence as corroborating Mr. Clay's testimony and as tending to show the non-payment of this rent (estate) the account of Joseph A. Clay, committee of the lunatic aforesaid; the account of Joseph A. Clay, administrator *c. t. a.*, as aforesaid, as stated by his executor, Harry G. Clay, and the account of Harry G. Clay, administrator *d. b. n. c. t. a.*, as aforesaid.

I will then ask the jury to find as a fact from the foregoing evidence that the said ground-rent estate has not been extinguished by being paid; which offer the defendant objected to as immaterial and irrelevant, and which objection the court sustained, the plaintiff excepting thereto.

GEORGE HENDERSON,

*Attorney for Appellant.*

Endorsement: 409, Jan. term, 1898. In the supreme court of Pennsylvania, eastern district. Clay, administrator, &c., vs. Iseminger. Assignments of error. Filed Feb. 4, 1899, in supreme court. George Henderson.

*Substitution of Jeannie M. Wilson as Plaintiff in Error.*

In the Supreme Court of Pennsylvania in and for the Eastern District,  
January Term, 1898.

HARRY G. CLAY, Administrator, &c., }  
vs. } No. 409.  
ADAM ISEMINGER and ELMER H. ROGERS. }

And now, Oct. 23rd, 1899, Harry G. Clay having been discharged from his said office of administrator and Jeannie M. Wilson having been duly appointed to the said office, the substitution of the said Jeannie M. Wilson, administratrix *de bonis non cum testamento annexo*, as plaintiff in error, is hereby suggested in place of the said Harry

G. Clay, administrator, etc., with the same effect as if the proceedings had originally been instituted by her.

GEORGE HENDERSON,  
Attorney for Jeannie M. Wilson, Administrator d. b. n. c. t. a.

Endorsement: 409, January term, 1898. In the supreme court of Pennsylvania, eastern district. Clay vs. Iseminger. Substitution of Jeannie M. Wilson as plaintiff in error. Filed Oct. 23, 1899, in supreme court. George Henderson.

UNITED STATES OF AMERICA, } ss :  
State of Pennsylvania,

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 87, inclusive, is a true and faithful copy of the record and proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein Harry G. Clay, adm'r d. b. n. c. t. a. of Alexander Osbourn, deceased, substituted by Jeannie M. Wilson, adm'x d. b. n. c. t. a., was appellant and Adam Iseminger, defendant, and Elmer H. Rogers, terre-tenant, were appellees.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of (Clay vs. 86 Iseminger) Pennsylvania, eastern district, at Philadelphia, the 9th day of November, 1900, and in the one hundred and twenty-fifth year of the Independence of the United States.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,  
*Prothonotary of the Supreme Court of  
Pennsylvania, Eastern District.*

{ Ten-cent United States internal-revenue stamp, }  
canceled 11, 9, 1900. C. S. G. }

87 I, J. Brewster McCollum, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this 9th day of November, one thousand nine hundred.

J. BREWSTER MCCOLLUM,  
*Chief Justice.*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable J. Brewster McCollum, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this 9th day of November, one thousand nine hundred.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,  
*Prothonotary.*

{ Ten-cent United States internal-revenue stamp, }  
canceled 11, 9, 1900. C. S. G. }

88 [Endorsed:] In the Supreme Court of the United States, Jeannie M. Wilson, adm., &c., plaintiff in error, *vs.* Adam Iseminger & Elmer H. Rogers, defendants in error. M. Hampton Todd, George Henderson.

Endorsed on cover: File No., 17,969. Pennsylvania supreme court. Term No., 193. Jeannie M. Wilson, administratrix *d. b. n. c. t. a.* of the estate of Alexander Osbourn, deceased, &c., plaintiff in error, *vs.* Adam Iseminger and Elmer H. Rogers. Filed November 15th, 1900.